



WEB COPY



HCP.No.2247 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2247 of 2024

Eswaran

... Petitioner/Father of the
Detenu

Vs.

1. The Secretary to the Government,
Home Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police/Detaining Authority,
Coimbatore City,
Coimbatore District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. State Rep. by,
The Inspector of Police,
All Women Police Station South,
Coimbatore City,
Coimbatore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



HCP.No.2247 of 2024

issue a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second Respondent dated 26.06.2024 in C.No. 74/G/IS/2024 against the petitioner son E.Udhayakumar, M/33 years, son of Eswaran, who is confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
For Respondents : Mr. R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The preventive detention order passed by the second respondent dated 26.06.2024 is sought to be quashed in the present habeas corpus petition.

2. Heard the learned Counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. The preventive detention order impugned has been issued based on the solitary case registered against the detenu under POCSO Act. No



HCP.No.2247 of 2024

adverse case has been relied upon nor the learned Additional Public Prosecutor could establish that the detenu is a habitual offender and his activities are leading to public disorder warranting invocation of Act 14 of 1982.

4. Personal liberty being a fundamental right enshrined under the Constitution of India, it may be taken away only with the Authority of Law. Personal liberty can be curtailed only after trial and by following due process of law. Preventive detention law being draconian and colonial, it is to be invoked sparingly to maintain public order. Thus, subjective satisfaction of the detaining Authority is of paramount importance. Subjective satisfaction on presumption would be insufficient but must be based on materials available on record. The power to punish a person cannot be vested with the Police Authorities and its abuse will result in serious consequences.

5. In the present case, the learned Counsel for the petitioner would submit that the similar bail order relied on by the Detaining Authority is



HCP.No.2247 of 2024

WEB COPY
dissimilar, since in the similar bail order case, the bail was granted under Section 167 (2) of Criminal Procedure Code, which is a statutory bail. In the present case, the detenu has not even filed a bail petition. Therefore, the Authorities have failed to apply their mind.

6. Growing trend of invoking Act 14 of 1982 indiscriminately by the Detaining Authority at no circumstances be encouraged by the Courts. Abuse of power under the pretext of preventive detention law must be viewed seriously by the Courts and in the event of identification of any such abuse, Courts will not hesitate to grant compensation to the victims. The award of compensation is to be considered, when the Court find that the preventive detention law has been invoked by abuse of power. In this regard, this Court has already suggested that the Government should form Guidelines to the Sub-ordinate Authorities, who all are competent to invoke Act 14 of 1982. Detaining Authorities must be provided with clear Guidelines under what circumstances they can invoke Act 14 of 1982 to prevent public disorder.

7. The learned Additional Public Prosecutor would submit that the Government is in the process of preparing SOP for invoking Act 14 of 1982



HCP.No.2247 of 2024

and it will be finalised as expeditiously as possible and probably within a period of four (04) weeks.

8. In view of the submission, we direct the first respondent/Secretary to the Government, Home Department, to ensure that Guidelines/SOP are issued to the Detaining Authorities to guide them to invoke Act 14 of 1982, only in deserving cases and any selective invocation or abuse of power must be a ground to initiate appropriate action against the Authorities. The reasons for invoking Act 14 of 1982 must be clearly stipulated and in consonance with the spirit of Act 14 of 1982. In this regard, the Government shall consider various Judgments of the Hon'ble Supreme Court of India at the time of preparing SOP/Guidelines.

9. In the present case, we do not find any sufficient reason for invoking Act 14 of 1982. Further, the similar bail order relied is found to be dissimilar, which resulted in non-applicaiton of mind. That apart, the detenu is already in actual imprisonment under preventive detention law for about five months.



HCP.No.2247 of 2024

WEB COPY

10. Accordingly, the detention order passed by the 2nd respondent, in proceedings C.No.74/G/IS/2024 dated 24.06.2024, is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu viz., E.Udhayakumar, aged 33 years, S/o. Eswaran confined at Central Prison, Coimbatore is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.] [M.J.R., J.]
05.11.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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HCP.No.2247 of 2024

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WEB COPY

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5. The Public Prosecutor,
Madras High Court,
Chennai - 104.



WEB COPY



HCP.No.2247 of 2024

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H.C.P.No.2247 of 2024

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